Filed 12/21/09 In re E.D. CA2/7

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re E.D. et al., Persons Coming Under the Juvenile Court Law.	B215164 (Los Angeles County Super. Ct. No. CK25635)
LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Plaintiff and Respondent, v. YVETTE D., Defendant and Appellant.	

APPEAL from an order of the Superior Court of Los Angeles County, Stephen Marpet, Juvenile Court Referee. Affirmed.

Lisa A. DiGrazia, on appointment by the Court of Appeal, for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, James M. Owens, Assistant County Counsel, and Sarah Vesecky, Deputy County Counsel, for Plaintiff and Respondent.

Yvette D., the mother of nine children, all of whom have been removed from her care, appeals from an order summarily denying her petition under Welfare and Institutions Code section 388[1] seeking, among other things, reunification services and visitation with her three youngest children at her place of incarceration. Yvette D. contends the juvenile court erred in denying her petition without an evidentiary hearing. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

1. *Previous Proceedings*

The Los Angeles County Department of Children and Family Services (Department) first filed a section 300 dependency petition involving Yvette D. in 1996 after her oldest child, B.L., was detained on allegations Yvette D. had a history of selling drugs and had left B.L. in the care of her mother, a heroin addict. The allegations were sustained. B.L. was declared a dependent child of the juvenile court, and Yvette D. was provided with reunification services consisting of drug treatment/testing, parenting classes and an Alanon program. She successfully reunified with B.L., and the jurisdiction of the juvenile court was terminated in November 1997.

A second dependency petition was filed in October 2000 alleging Yvette D., who was then on probation for drug use, continued to abuse drugs, had left her three children (B.L., D.L. and C.L.) in the care of relatives who were substance abusers and had failed to ensure B.L. attended school or C.L. had been properly immunized. The allegations of the petition were sustained, and Yvette D. was again provided with reunification services consisting of random drug testing and parenting classes. She was able to reunify with the children, and dependency jurisdiction was terminated in March 2003.

A third petition was filed in February 2004 concerning Yvette D.'s four children (B.L., then 10 years old; D.L., 7 years old; C.L., 4 years old; and E.L., then only 12 months old). The sustained allegations included serious charges of physical and emotional abuse: Four-year-old C.L. had been systematically starved by her mother and

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[1] Statutory references are to the Welfare and Institutions Code unless otherwise indicated.

weighed 22 pounds. Yvette D. and other family members beat C.L. with a belt to keep her from eating and beat her siblings when they gave her food. C.L. was also locked in her room and tied up with shoelaces to prevent her from seeking food. She was forced to eat scraps from the floor or garbage and drink water from the turtle tank.[2] At the same time, the other children were severely overweight. The house was filthy and unsanitary, and the children were dirty. Further, Yvette D. had forced the one-year-old to drink adult-prescription cough medicine, and he had multiple bruises on his forehead and severe diaper rash. Yvette D. had also abused the children emotionally, telling them she wished they had never been born and she intended to kill her unborn child.

This time, Yvette D. was not offered reunification services; and the children were ultimately placed in permanent plans consisting of legal guardianship and adoption. In March 2004, shortly after the children were detained, Yvette D. was arrested and charged with a violation of Penal Code section 273a, subdivision (a), for willfully causing great bodily harm to a child. She pleaded no contest and received a suspended sentence and was placed on formal probation for five years.

A fifth child, F.D., was born in June 2004. After the Department detained him, Yvette D. was offered no family reunification services; and parental rights were terminated in November 2005.

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[2] The detention report included additional details about C.L.'s condition when she was found hiding behind a curtain in the filthy home. She appeared "starved and deathly," having "no affect" and "unable to speak or walk." She was dressed in a T-shirt and underwear and was "extremely cold and shivery." Her bones were protruding from her body; her skin was hanging from her body. She had a severe bruise across her face and others on her legs; her skin was "extremely dry and chapped;" her hair was "full of lice," and she had two large lesions on her scalp that appeared to be insect bites. While the other children shared a bed with their mother, she slept on a dirty sheet on the hardwood floor. Although the family was well aware of C.L.'s condition, Yvette D. kept C.L. locked in a backroom so visitors would not see her. Although other referrals had been made to the Department, Yvette D. hid C.L. during the Department's previous attempts to investigate.

2. *The Instant Proceeding*

Yvette D. again came to the attention of the Department in May 2006. After delivering a baby girl, S.L., at home, she was taken with the baby to a hospital where she denied she had used drugs during her pregnancy. When she and the baby tested positive for methamphetamine, the hospital alerted the Department. During an interview with a social worker, Yvette D. admitted she had two other children, twin boys, E.D. and F.D., who had been born in April 2005. According to Yvette D., the twins resided with their father near Sacramento.

The Department detained the baby and filed a petition on behalf of the baby and the twins alleging the children were at risk of abuse due to the parents' substance abuse and the severe abuse and neglect their older siblings had suffered. When the father and twins failed to appear for the detention hearing, the court issued protective custody warrants for the twins and an arrest warrant for the father. The father was arrested and appeared before the court but denied the twins were living with him. At the jurisdiction hearing on July 31, 2006 Yvette D. and the twins failed to appear. Over her counsel's objection, the court issued a warrant for Yvette D.'s arrest, sustained the allegations of the petition, held a disposition hearing as to S.L., denied reunification services with S.L. pursuant to section 361.5, subdivision (b)(10), (11) and (13), and set a section 361.26 hearing to consider a permanent plan for S.L.[3]

For the next year and a half Yvette D. eluded the Department, notwithstanding multiple attempts to locate her. Family members denied knowing where she or the twins could be found or claimed they did not live at the address. She was finally arrested and appeared before the court on January 25, 2008. Under questioning by the court she claimed the twins were residing in Mexico with their father. According to Yvette D., the family had moved to Mexico to allow her to deliver her ninth child, R.D, in September 2007. She had returned to the United States only to assist her grandmother, and the children had remained in Mexico with the father. Based on her history of lying to the

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[3] Yvette D.'s parental rights with respect to S.L. were terminated on August 28, 2007.

court, the inconsistencies in her story and her inability to remember the name of the hospital or where the family was living in Mexico, the court ordered her detained and scheduled a contempt hearing.

A section 300 petition was filed on behalf of R.D. in March 2008 although his whereabouts were then unknown. On March 26, 2008 the court ordered R.D. detained and issued a protective custody warrant for him pursuant to section 340.

Between January and April 2008 Yvette D. was detained in the county jail and twice cited for contempt for refusing to disclose the location of the children.[4] A second warrant was issued for the alleged father, and he too was arrested and detained. Finally, on April 14, 2008, the Department was informed by the paternal grandmother the children, who had been living with a friend of Yvette D.'s, had been returned to her when the friend learned Yvette D. would be required to serve the suspended sentence on the March 2004 felony child abuse conviction. The Department immediately removed the children (E.D., F.D. and R.D.) and placed them in foster care. At a hearing on April 16, 2008 the court issued restraining orders barring the parents from having any contact with the children pending the disposition hearing set for May 15, 2008.

The disposition report prepared for the hearing disclosed that Yvette D. gave birth to the twins at the paternal grandmother's home and was taken to a local hospital where she had given a false name and had claimed to have unlawfully immigrated to the United States. The twins had been born three months prematurely and spent two months in the neonatal intensive care unit. Upon their release, Yvette D. was directed to take them to the regional center for services but she never went. The foster parents reported that, although the three-year-old twins were healthy, they appeared to be developmentally delayed. Based on the history of Yvette D.'s drug use, her neglect of her older children

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[4] In one exchange the court asked Yvette D., who had claimed not to know where the children were living, whether she would disclose their location if she knew where they were and she admitted she would not. Although Yvette D. was incarcerated on the contempt citations for several days, she was also detained because she violated probation on the felony child abuse conviction.

and her failure to reunify with them, the Department recommended Yvette D. and the alleged father be denied reunification services. As the Department explained, "Both parents [have] had ample opportunity to address their substance abuse issues. The mother was provided with reunification services multiple times where she attended drug treatment programs, counseling and parenting [classes]. Even after participating in treatment, the mother continued to use drugs and place the children at-risk of harm. The mother admits that when the children's four older siblings . . . were removed, she was 'so high' . . . she didn't know what was going on in the home. . . . [The father] also continues to have substance abuse issues as well. In fact, the mother reports that [he] wrote her a letter stating that all he is doing right now is getting high. . . . It seems that the parents are not able to alleviate their substance abuse problem . . . ."[5]

The disposition hearing was continued until August 25, 2008. An interim review report stated the twins had been found to have developmental delays, possibly resulting from fetal alcohol syndrome. In addition, Yvette D. had been found in violation of the terms of her probation and sentenced to four years in state prison. At the hearing the court denied reunification services for the parents and scheduled a permanency planning hearing under section 361.26 for December 16, 2008 for E.D., F.D. and R.D.

The permanency planning hearing had to be continued for six months because the children lacked birth certificates. The court reset the hearing for June 16, 2009.[6] On February 20, 2009 Yvette D. submitted a petition under section 388 seeking reunification services, investigation of placement of the children with specified relatives, visitation for the children with those relatives and visitation with her at her place of incarceration. She based her request on the significant bond between her and the children and her significant

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[5] The disposition report for R.D. further discloses that, after his birth, the father became physically abusive to Yvette D. Around the same time, Yvette D.'s mother, a heroin addict with whom Yvette D. and the children were then living, was convicted of attempted murder and sentenced to a state prison term of 13 years. Yvette D. began again to use methamphetamines and became unable to care for the children, who went to live with their paternal grandmother.

[6] The hearing has since been rescheduled for January 7, 2010.

advance in rehabilitation, which included her participation in substance abuse counseling and other rehabilitation programs during her incarceration.

The court summarily denied the petition on March 13, 2009, finding (1) there had been no change of circumstances; and (2) the requested relief was "clearly . . . not in [the] minors' best interest[s]."

DISCUSSION

1. *Governing Law and Standard of Review*

Section 388 provides for modification of prior juvenile court orders when the moving party can demonstrate new evidence or a change of circumstances and modification of the previous order is in the child's best interest. (*In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446; *In re Kimberly F.* (1997) 56 Cal.App.4th 519, 526.)[7] "The parent seeking modification must 'make a prima facie showing to trigger the right to proceed by way of a full hearing.'" (*In re Anthony W.* (2001) 87 Cal.App.4th 246, 250.)

The required prima facie showing has two elements: The parent must demonstrate (1) a genuine, significant and substantial change of circumstances or new evidence and (2) revoking the previous order would be in the best interests of the child. (*In re Anthony W., supra,* 87 Cal.App.4th at p. 250.) That is, "the petition must allege a change of circumstance or new evidence that requires changing the existing order." (*In re Daijah T.* (2000) 83 Cal.App.4th 666, 672.) "It is not enough for a parent to show *just* a genuine change of circumstances under the statute. The parent must show that the undoing of the prior order would be in the best interests of the child." (*In re Kimberly F., supra,* 56 Cal.App.4th at p. 529.)

"The petition [is] liberally construed in favor of its sufficiency." (*In re Daijah T., supra,* 83 Cal.App.4th at p. 672.) To be entitled to a hearing, the petitioner "need[] only . . . show 'probable cause'; [the petitioner is] not required to establish a probability of

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[7] Section 388 provides a parent or other interested party "may, upon grounds of change of circumstance or new evidence, petition the court . . . for a hearing to change, modify, or set aside any order of court previously made . . . . [¶] . . . [¶] If it appears that the best interests of the child may be promoted by the proposed change of order, . . . the court shall order that a hearing be held . . . ."

prevailing on [the] petition." (*In re Aljamie D.* (2000) 84 Cal.App.4th 424, 432-433.) Nonetheless, if the allegations fail to show changed circumstances such that the child's best interests will be promoted by the proposed change of order, the dependency court need not order a hearing. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806-807 ["the hearing is only to be held if it appears that the best interests of the child may be promoted by the proposed change of order"]; cf. *In re Edward H.* (1996) 43 Cal.App.4th 584, 593 ["'prima facie' showing refers to those facts which will sustain a favorable decision if the evidence submitted in support of the allegations by the petitioner is credited"].)

We review the juvenile court's summary denial of a section 388 petition for abuse of discretion. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 460; *In re Anthony W., supra,* 87 Cal.App.4th at p. 250.) The appellate court will not disturb the juvenile court's decision unless the juvenile court has exceeded the limits of legal discretion by making an arbitrary, capricious or patently absurd determination. (*Angel B.*, at p. 460.)

2. *The Juvenile Court Did Not Abuse Its Discretion in Denying Yvette D.'s Section 388 Petition*

Yvette D. contends her participation in substance abuse and other rehabilitative programs during her incarceration demonstrates, at a minimum, a prima facie case of changed circumstances sufficient to warrant an evidentiary hearing on the merits of her petition. She argues the purpose of section 388 is to provide an "escape mechanism" for those parents who "complete a reformation in the short, final period after the termination of reunification services but before the actual termination of parental rights." (*In re Kimberly F., supra*, 56 Cal.App.4th at p. 528.) "'[I]f the petition presents *any evidence* that a hearing would promote the best interests of the child, the court will order the hearing.'" (*In re Lesly G.* (2008) 162 Cal.App.4th 904, 913.) That evidence, she claims, lies in the strong bond she has with her children and the value to them of maintaining relationships with their relatives.

The Department responds there has been no change in circumstances because reunification services had been provided in the past but Yvette D. either failed to complete the mandated programs or relapsed in her substance abuse. The fact that she is

now incarcerated and has completed some programming does not signal a reformation sufficient to warrant relief under section 388, and her past behavior eviscerates any argument a relationship with her would be in the children's best interests.

Even were we to assume Yvette D.'s "reformation" is complete and has been accomplished by sincere and rigorous self-examination, a showing of changed circumstances is insufficient to warrant relief under section 388. After the termination of reunification services, a parent's interest in the care, custody and companionship of the child is no longer paramount. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.) Rather, the focus shifts to the needs of the child for permanency and stability, and a rebuttable presumption arises that continued foster care is in the best interest of the child. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310.) In determining the best interests of the child, the juvenile court is required to consider, among other factors, the reason for the dependency, the reason the problem was not overcome, the strength of the parent-child and child-caretaker bonds, the length of time the child has been a dependent, the nature of the change of circumstance, the ease by which the change could be achieved and the reason it was not made sooner. (*In re Aaliyah R., supra*, 136 Cal.App.4th at pp. 446-447.) Although the specific circumstances a court must consider vary with each case, the child's welfare necessarily involves elimination of the specific factors that required placement outside the parent's home. (*In re Heather P.* (1989) 209 Cal.App.3d 886, 892.)

The record discloses no basis to find the juvenile court abused its discretion in this case. To the contrary, the court was properly focused on the best interests of the children, with whom the court had become very well acquainted, having presided over the case for nearly three years. During that time, Yvette D. repeatedly lied to the court and refused to disclose the location of the children or to acknowledge the risks to them associated with her behavior. Putting aside the dreadful conditions uncovered in the proceedings involving her older children, she proved herself in the proceedings now before us to have little regard for her younger children's health or development. Instead, she appeared to prize above all else her ability to "game" the system. Having been repeatedly lied to and

frustrated in its ability to protect the children, it is no surprise the court found her assertion of reform lacking and her assertion of parental bond inadequate. There is ample evidence in the record to support the juvenile court's finding renewed contact with Yvette D. would not be in their best interests.

DISPOSITION

The order of the juvenile court is affirmed.

PERLUSS, P. J.

We concur:

WOODS, J.

JACKSON, J.